

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-010115

08/24/2018

HON. PAMELA GATES

CLERK OF THE COURT  
K. Ballard  
Deputy

ROBERT J BARON

ROBERT J BARON  
18631 N 19TH AVE  
158-288  
PHOENIX AZ 85027

v.

HONORHEALTH, et al.

ANDREW S ASHWORTH

RULING

Before the court are the following pleadings:

1. Plaintiff's July 19, 2018 ARCP Rule 26 Motion for Protective Order and Limitation Against Unlawful Discovery, Defendant's August 7, 2018 Response, and Plaintiff's August 20, 2018 Reply.
2. Plaintiff's July 22, 2018 pleading entitled, "ARCP Rule 37 Motion to Compel Discovery and Request for Sanctions and Failure to Comply with Court Order," Defendant's Response filed August 8, 2018, and Plaintiff's Reply filed August 21 2018.

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**1. Plaintiff's July 19, 2018 ARCP Rule 26 Motion for Protective Order and Limitation Against Unlawful Discovery**

In Plaintiff's July 19, 2018 pleading, he seeks a protective order from the court's June 8, 2018 order. Plaintiff's request is denied.

Plaintiff also seeks an order preventing Defendant from conducting a four-hour, in-person deposition and a preemptive order from the court restricting the scope of Defendant's deposition questions. Plaintiff claims a two-hour deposition restriction is fair because the court previously imposed a limitation that Plaintiff may conduct three, two-hour depositions. As set forth in Rule 30(d) of the Arizona Rules of Civil Procedure, "[u]nless the parties agree **or the court orders otherwise**, a deposition is limited to 4 hours and must be completed in a single day." *See* Ariz. R. Civ. P. 30(d)(1). The court previously limited Plaintiff's requested non-party depositions to an aggregated time of six hours. The court finds no good cause to limit the deposition of Plaintiff to two hours.

Plaintiff also seeks a protective order, allowing him to participate in a telephonic deposition due to fact that he resides out-of-state. The Arizona Rules of Civil Procedure allow the court to order that a deposition be taken by telephone or other remote means. This procedure is particularly applicable when a person is physically unable to travel or a remote non-party witness has limited involvement. However, here, the deponent at issue is the Plaintiff. Moreover, Defendant seeks to videotape Plaintiff's deposition, thereby creating logistical challenges with Plaintiff's requested telephonic deposition. The court finds it noteworthy that Plaintiff cites a financial inability to attend his in-person deposition noticed by Defendant, but in January 2018, Plaintiff requested 14 in-person depositions with non-party witnesses. Plaintiff's request for a court-ordered telephonic deposition is **denied**.

Finally, Plaintiff requests a preemptive limitation on the questioning at Plaintiff's deposition. The court declines Plaintiff's invitation to impose a preemptive order and merely reminds the parties of their obligation to comply with the Arizona Rules of Civil Procedure.

**IT IS ORDERED** denying Plaintiff's July 19, 2018 ARCP Rule 26 Motion for Protective Order and Limitation Against Unlawful Discovery and ordering that Plaintiff must appear for a properly noticed in-person, four-hour videotaped deposition **within 30 calendar days** of the filing date of this Ruling.

**IT IS FURTHER ORDERED** denying Defendant's request for an award of attorneys' fees and costs in preparing Defendant's responsive pleading.

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**2. Plaintiff's ARCP Rule 37 Motion to Compel Discovery and Request for Sanctions and Failure to Comply with Court Order**

This motion arises from the court's June 8, 2018 order obligating Defendant to respond to Plaintiff's Interrogatories numbered 22, 23, 28 and 29 on or before July 15, 2018. Plaintiff claims that the court's order refers to the interrogatories identified in Plaintiff's May 15, 2018 Memorandum. In Plaintiff's May 15, 2018 Memorandum to the court,

Interrogatory No. 22 reads:

Does Eric Zuhlke possess any knowledge regarding any HonorHealth employee(s) participating in hacking of Plaintiff's website?<sup>1</sup>

Interrogatory No. 23 reads:

Did Emily Borlas influence the denial of Plaintiff's several job applications?<sup>2</sup>

Interrogatory No. 28 reads:

Did Wallach participate in firing the Plaintiff for false reason(s)?<sup>3</sup>

Interrogatory No. 29 reads:

Did Wallach conduct any investigation into Plaintiff's report to you that IT was asking physicians and others for their confidential system logins over the phone?<sup>4</sup>

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<sup>1</sup> The corresponding interrogatory in Defendant's March 23, 2018 Responses to Interrogatories was Number 19, which reads, "(Eric Zuhlke) Do you possess any knowledge regarding any HonorHealth employee(s) participating in hacking of Plaintiff's website [www.honorhealthwrongfultermination.com](http://www.honorhealthwrongfultermination.com)?" Defendant's response was, "HonorHealth objects to this interrogatory on the grounds that it is irrelevant to any issue in dispute in this matter. Plaintiff has not made any reference to any supposed hacking of his website in either his Second Amended Complaint or in any disclosure statement. Subject to this objection, HonorHealth responds – no."

<sup>2</sup> The corresponding interrogatory in Defendant's March 23, 2018 Responses to Interrogatories was Number 20, which reads, "(Emily Borlas) Did you influence the denial of Plaintiff's several job applications?" Defendant's response was, "No."

<sup>3</sup> The corresponding interrogatory in Defendant's March 23, 2018 Responses to Interrogatories was Number 25, which reads, "(Jonathan Wallach) Did you participate in firing the Plaintiff for false reason(s)?" Defendant's response was, "No."

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Defendant argues that the court's June 8, 2018 ruling reflected the interrogatory numbers used in Defendant's March 23, 2018 answers to the interrogatories (hereinafter referred to as "the March 2018 Interrogatories"). In the March 2018 Interrogatories, Interrogatories 22, 23, 28, and 29 and responses are as follows:

Interrogatory No. 22:

(Jonathan Wallach) List each date that you became aware of Plaintiff's requests for you to help him?

Response:

HonorHealth objects to this interrogatory on the basis that it improperly assumes that Plaintiff requested that Mr. Wallach help him. Mr. Wallach was directed by HonorHealth's General Counsel to investigate Plaintiff's complaints in conjunction with Jan Elezian, which they did.

Interrogatory No. 23:

(Jonathan Wallach) List each action or no action you took regarding question above.

Response:

HonorHealth repeats and incorporates its response to Interrogatory 22 above.

Interrogatory No. 28:

(Jan Elezian) List each date that you became aware of Plaintiff's requests for you to help him?

Response:

HonorHealth objects to this interrogatory on the basis that it improperly assumes that Plaintiff requested that Ms. Elezian help him. Ms. Elezian was directed by HonorHealth's General Counsel to investigate Plaintiff's complaints in conjunction with Jonathan Wallach, which they did.

Interrogatory No. 29:

(Jan Elezian) List each action or no action you took regarding question above.

Response:

HonorHealth repeats and incorporates its response to Interrogatory 28 above.

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<sup>4</sup> The corresponding interrogatory in Defendant's March 23, 2018 Responses to Interrogatories was Number 26, which reads, "(Jonathan Wallach) Did you conduct any investigation into Plaintiff's report to you that IT was asking physicians and others for their confidential system logins over the phone?" Defendant's response was, "Yes."

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In the June 8, 2018 order, the court imposed a deadline of July 15, 2018, which fell on a Sunday. Therefore, compliance with the court's order was timely if the information was produced on July 16, 2018.

The court acknowledges that the court's June 8, 2018 order arguably created, perhaps, some sense of uncertainty; however, a quick comparison of the interrogatories in Plaintiff's Memorandum against the propounded interrogatories reveals the court's intent that Defendant provide supplemental responses to the Interrogatories 22, 23, 28 and 29 in the March 23, 2018 Interrogatories. Due to the potential for confusion arising from the court's June 8, 2018 order regarding Defendant's obligation to respond to Interrogatories 22, 23, 28, and 29, the court will not impose sanctions against Plaintiff in connection with filing the July 22, 2018 Motion.

The court finds that Plaintiff's request for the imposition of sanctions against Defendant lacks support.

**IT IS ORDERED** denying Plaintiff's ARCP Rule 37 Motion to Compel Discovery and Request for Sanctions and Failure to Comply with Court Order.